IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3038 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JULEKHABEN ABDULLABHAI MEMON

Versus

ANJAR MUNICIPALITY

Appearance:

1. Special Civil Application No. 3038 of 2003

MR SHAKEEL A QURESHI for Petitioner No. 1

MR YS MANKAD for Respondent No. 1

MR SN SHELAT, ADVOCATE GENERAL, with Ms MAITHILI MEHTA, AGP, for Respondent No. 2

MR NIKHILESH J SHAH for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 22/07/2004

ORAL JUDGEMENT

The petitioner is a resident of Anjar, who has been aggrieved because of reconstitution of her plot of land. She has approached this court with a prayer that she should be given a Final Plot at the place where she was having her original plot.

2. The facts giving rise to the present petition, in a nutshell, are as under:

2.1 The petitioner was owner of land bearing Survey Nos. 344 and 345 at Anjar. The said survey numbers were given Original Plot No. 16 and ultimately, in pursuance of Anjar Town Planning Scheme No. 4, she has been allotted Final Plot No. 16. The area of the original plot as well as the final plot has remained the same.

3. Learned advocate Shri Qureshi appearing for the petitioner has submitted that the petitioner has been aggrieved by reconstitution of her plot for the reason that she has been shifted to a different place. According to the petitioner, it was possible for the respondent authorities to allot the final plot to her at the place, where the petitioner was having her original plot. It is her case that the owner of land bearing survey No. 343 has been given final plot at the same place, whereas the petitioner has been shifted to a different place. Thus, discriminatory treatment has been given to the petitioner. Moreover, it was not at all necessary to widen the road, which was in front of her house, and in the process of widening of the road, the petitioner is losing her house as well as her land. It has been further submitted by him that the petitioner has been shifted to a plot which is not on the main road. Thus, the petitioner will not have a good frontage of wider road. Moreover, the petitioner will have to demolish her house and she will have to incur expenditure for that purpose.

4. It has been thereafter submitted by learned advocate Shri Qureshi that representations made by the petitioner had not been considered by the respondent authorities and no final decision has been taken thereon.

5. It has been thereafter submitted by him that about 374 objections were filed by the residents of Anjar in relation to their plots and, therefore, the respondent authorities should have withdrawn the scheme as per the provisions of sec. 66 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as 'the Act'). By not withdrawing the scheme, the

respondent authorities have acted against the spirit of sec. 66 of the Act. The learned advocate has also submitted that the action of the respondent authorities is also in violation of the principles of natural justice as without giving any notice to the petitioner, the final decision to allot a different plot to the petitioner has been taken.

6. In pursuance of notice issued by this court, learned advocate Shri Y.S. Mankad has appeared for respondent no. 1, learned Advocate General Shri S.N. Shelat alongwith learned AGP Ms. Maithili Mehta have appeared for respondent No. 2, and learned advocate Shri N.J. Shah has appeared for respondent No. 3.

7. It is the case of the respondent authorities that the authorities have acted in accordance with law and neither any discriminatory treatment has been given to the petitioner nor any principles of natural justice has been violated by the respondent authorities.

8. Substantiating their case, as set out in the affidavit-in-reply filed by respondent No. 3, it has been submitted that as a part of town planning, it was absolutely essential to widen the road, which was in front of the petitioner's house, which is situated at Original plot No. 16. It has been submitted that roads of Anjar were very narrow and at the time when the earthquake had taken place on 26.1.2001, necessary assistance could not be rendered to affected and needy persons because ambulance vans and fire brigade vehicles could not be taken to the places, where help was badly required, due to narrow lanes and roads. It has been, therefore, submitted that as a part of planning, it was decided to widen the roads and therefore the road, which is in front of Original plot NO. 16, has been widened.

9. It has been submitted that the grievance of the petitioner that she has been shifted to an inconvenient place is not proper. The size of original plot belonging to the petitioner was 58.34 sq.mt. and the size of her final plot is also the same. Thus, as a result of the scheme, the petitioner is not losing any land, whereas other persons have lost a portion of their land by way of getting smaller final plots in lieu of bigger original plots.

10. It has been submitted that no discriminatory treatment has been given to the petitioner as alleged. The petitioner has given an instance of the owner of land bearing survey No. 343. It has been submitted that the

size of survey No. 343, which was given Original Plot No. 15, was initially 150.99 sq.mt. As a result of implementation of the scheme, the size of the said plot has been reduced to 130 sq.mt. Thus, the owner of the said land has lost 20.99 sq.mt., whereas in case of the petitioner, she being an owner of a smaller plot, the respondent authorities had made all possible efforts to see that her land is not reduced as a result of implementation of the scheme.

11. It has been submitted on behalf of the respondents that the submission with regard to irregular shape and size of the final plot allotted to the petitioner is also not correct. The petitioner has been given a plot, which is having reasonably regular shape. It has been submitted that it will be possible for the petitioner to construct her house as per the standard laid down in General Development Control Regulations (GDCR). It has been submitted on behalf of the respondents that, when the Development Plan had been sanctioned by the State of Gujarat, the State of Gujarat had also approved the GDCR, which prescribes norms with regard to construction of houses. The houses must be constructed as per the norms determined in GDCR and according to the respondents, it would be possible for the petitioner to construct her house in Final Plot No. 16 as per the norms laid down in GDCR, which has been approved by the State of Gujarat alongwith the Development Plan.

12. With regard to violation of the provisions of Rule 26 of the Gujarat Town Planning and Urban Development Rules, 1979, and not giving any notice to the petitioner, it has been submitted on behalf of the respondents that the petitioner was given due opportunity to represent her case. In fact, a representative of the petitioner had attended the office of respondent No. 3 in pursuance of a notice given to the petitioner. The petitioner, being an old illiterate muslim lady, someone on her behalf had attended the office of respondent No. 3 and had represented her case. It has been thus submitted that it is not true that the petitioner was not given due opportunity to represent her case. It has been also submitted that upon considering the objections which had been filed on behalf of the petitioner, the case of the petitioner was duly considered, but as it was necessary to have wider road in front of original plot No. 16, which was initially survey Nos. 344 and 345, the representations of the petitioner were not accepted. It has been further submitted that formerly the petitioner was having frontage of only a small lane,

width of which was hardly 10 ft., whereas now as a result of implementation of the scheme, the petitioner will be having frontage on a 6 M. wide road. Thus, it is not true that the petitioner has been pushed into a smaller lane as alleged by the learned advocate appearing for the petitioner.

13. It has been also submitted that the respondent authorities have not violated the provisions of sec. 66 of the Act. It was the case of the petitioner that as 374 persons had objected to the scheme, the respondent authorities ought to have withdrawn the scheme. It has been submitted that sec. 66 of the Act provides that if majority of the owners in the area object to the scheme, then the Town Planning Officer has to invite all persons interested in the scheme, and upon considering the objections and representations, he may forward the representation alongwith the objections to the State of Gujarat. In the instant case, majority of the owners had not objected to the scheme and, therefore, there was no question of taking any action in pursuance of sec. 66 of the Act. It has been submitted by learned advocate Shri Shah appearing for respondent No. 3 that there are about 3800 properties of the residents in Anjar, whereas only in respect of 374 properties, objections had been filed. Thus, it is clear that majority of the persons were not against the scheme. It has been lastly submitted by him that as the petitioner or her representative was given hearing and as her representation had been considered, it cannot be said that principles of natural justice had been violated.

14. Looking to the aforestated submissions made on behalf of the respondents, it my opinion it cannot be said that the respondent authorities have acted arbitrarily or in violation of the provisions of the Act. Whether to have a road of a particular width is a subject-matter of planning and, according to the law laid down by the Hon'ble Supreme Court, that is to be left at the discretion of the planners. If, however, if the court finds that the planning has been done in an arbitrary or malicious manner, then only the court should interfere. There does not appear to be any arbitrariness in the instant case. The petitioner has not lost her land. On the contrary, she would be having a better frontage because she will be having her house on a road having 6 M width, whereas formerly her house was abutting a road with about 10 ft. width.

15. At times in the process of planning an individual might have to co-operate by foregoing something or even

suffering some loss. He should not have sentimental value for one place and should be ready to shift to another place or smaller plot for larger benefit of the society.

16. At this stage, learned advocate Shri Qureshi has submitted that the ex-parte ad-interim relief, which had been granted to the petitioner, be continued for sometime. It is not possible to continue the relief in the instant case for the reason that it has been submitted on behalf of the respondent authorities that the State of Gujarat has laid down a policy to render financial assistance to those who have suffered loss of property due to the earthquake, which had taken place on 26.1.2001. It has been stated that an affected person has to complete construction upto plinth level before 31st August so as to avail financial aid. It has been submitted on behalf of the respondents that if the ad-interim relief is continued, it would not be possible to give possession of Final Plots Nos. 27 and 28 to the concerned persons, and in that event, those final plot holders would not be in a position to put up construction on the plots allotted to them and avail of financial aid. It has been submitted that due to ex-parte ad-interim relief granted by this court, the said plot holders could not be given possession of their final plots and even their plans submitted to respondent No. 3 could not be sanctioned. So as to see that those plot holders are not put to difficulties and to see that they can get their plans sanctioned and get possession of their property so as to avail of financial aid from the State, I am constrained to vacate the ex-parte ad-interim relief granted by this court.

17. For the reasons recorded hereinabove, I do not find any substance in the petition and the petition is rejected. Notice is discharged. Ad-interim relief granted earlier stands vacated.

(A.R. Dave, J.)

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